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Focus

What law applies?

Article 39, Additional Protocol I? No, US and Iraq are not state-parties.

A century old convention, the **1907 Hague Convention IV** and its appended Regulations and a 55-year old case, **Skorzeny**, still regulate whether the uniform of the enemy can be worn.

Hague Convention IV, Regulations, Art. 23

“[...] it is especially forbidden:

– (f) to make improper use of [...] the military insignia and uniform of the enemy.”

Skorzeny (1947)

Ten accused were officers in the 150th Panzer Brigade commanded by Skorzeny in the 1944 Ardennes battle. They were charged with improper use of American uniforms by entering into combat disguised. Accused acquitted of all charges.

Bothe, et al., New Rules for Victims of Armed Conflict

“[...] some uses are not breaches of the Protocol, but the boundary between forbidden and permissible uses is not very distinct.”

**Wearing the Uniforms of the Enemy:
Does It Violate the Law ?**

06.03.03 CNN: “In an effort to blame the US and UK for war atrocities, the US charged that Iraq will dress members of a paramilitary force in uniforms from the two countries...Hussein has ordered procurement of military uniforms identical ...to those of US and UK forces.” This introduces the question of the legality of the use of uniforms of the enemy in war.

What is the law applicable to wearing uniforms of the enemy?

According to Article 39 (1) of Additional Protocol I of 1977 it is prohibited to make use in an armed conflict of “the flags or military [...] *uniforms of neutral [...] states*”. Paragraph 2 prohibits the “use of [...] *military [...] insignia or uniforms of adverse parties while engaging in attacks or in order to shield, favour, protect or impede military operations*”. This seems to be a complete prohibition, but is it? Can an army unit wear the uniform of the enemy while moving into the area of the enemy and then change into its proper uniform immediately prior to attack and thereby avoid a violation?

Neither the US nor Iraq is among the 161 states-parties to AP I. So, not bound by AP I, can the provisions of Art 39 be seen as customary international law and thus binding the US and Iraq? At first examination it would seem so. Hague Convention II of 1899 and Hague Convention IV of 1907 and their Regulations Respecting the Laws and Customs of War on Land in Art 23 (f) prohibit “*the improper use of [...] the military insignia and uniform of the enemy*”.

The Nuremberg Tribunal determined the Hague Conventions mentioned above to be customary international law and thus binding on all nations of the world.

However, when one forbids the improper use does that not imply that there is a proper use? Most scholars think so. The Geneva Conventions are silent with regard to the uniform issue.

The Bothe commentaries to the Additional Protocols support the conclusion that the use of the uniform of the enemy during an actual attack is prohibited. In addition, Bothe states that the prohibition extends to military operations preparatory to an attack. But is it a total prohibition?

The *Skorzeny* case from the US Military Court in Germany in 1947 seems to strengthen the position that not all uses are forbidden. Though the accused did use US military uniforms in order to penetrate behind the US lines in 1944, all were found not guilty because there was no proof that they had actually engaged in combat (opened fire) while wearing the forbidden uniforms. Apparently, this was merely a permitted **ruse of war**, “a deceit employed in the interest of military operations for the purpose of misleading the enemy.” Also, the US Army manual effective during WW II approved the use of the uniform of the enemy as a ruse of war, but not during actual combat.

In conclusion, the law that is applicable is the Hague Convention of 1907. If the traditional law applies to the war in Iraq, the use of the uniform of the enemy is not a violation of the law of war if it is used to penetrate the enemy lines but the uniform must be discarded prior to initiation of actual combat.

Responsibility

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